IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2020 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHATRUSHAILYA DIGVIJAYSINGH JADEJA

Versus

COMMISSIONER OF INCOME TAX RAJKOT

Appearance:

1. Special Civil Application No. 2020 of 1999

MR KH KAJI for Petitioner

MR BB NAIK for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 25/09/2002

CAV JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this petition under Article 226 of the

Constitution, the petitioner has prayed for a writ, direction or order of this Court quashing and setting aside the orders dated 9.2.1999 passed by the respondent-Commissioner of Income-tax, Rajkot rejecting the petitioner's declarations under the Kar Vivad Samadhan Scheme for A.Ys. 1984-85 to 1991-92 and the petitioner has also prayed for a writ to direct the respondent to accept the petitioner's declarations under the said Scheme and to pass necessary orders under the said Scheme as required by law.

2. The petitioner is an individual who has landed properties and various sources of income assessable under the Income-tax Act, 1961 (hereinafter referred to as "the Act") as well as under the Wealth Tax Act. The petitioner was assessed to income-tax and wealth-tax for various years and on completion of the said assessments, certain tax liabilities arose. The petitioner was unable to discharge the said tax liabilities which also resulted in liability for interest and for penalty for non-payment of dues. The relevant years are A.Ys. 1984-85 to 1991-92. For some of these years, the petitioner had preferred First Appeals before the Commissioner of Income-tax (Appeals), but as the self-assessment tax under Section 140A was not paid, the appeals were not entertained by the said appellate authority in the years 1992 and 1993. For the other years, the petitioner had not preferred appeals.

3. The Government of India promulgated the Kar Vivad Samadhan Scheme (hereinafter referred to as "the Scheme" or "the KVSS") through the Finance (No. 2) Act, 1998 as contained in Sections 86 to 98 of the said Act. The Scheme came into force from 1st September 1998 and remained in force till 31st December 1998 and extended till 31st January 1999.

4. The petitioner filed revision applications under Section 264 of the Act before the Commissioner of Income-tax, Rajkot-respondent herein. All the said revision applications were filed in November/December, 1998. The relevant A.Ys. were A.Ys,1986-87 to 1991-92 for income-tax and A.Ys. 1984-85 and 1985-86 for wealth-tax. Since there was delay in filing the said revision applications, the petitioner applied for condonation of delay. After filing of the revision applications, the petitioner also applied for settlement of the tax dues under the aforesaid KVSS in respect of his liability for tax, interest and penalty under the Income-tax Act and also under the wealth-tax Act. The said applications were made on 28/29th December 1998.

The details about the revision applications including the assessment year, the amount of tax involved, the amount of interest and penalty involved etc. are set out in a statement which is annexed to this judgment at Annexure "A". According to the petitioner, since the revision applications were filed before the respondent under Section 264 of the Act and the same were pending on the date of filing of declarations for the relevant years, the petitioner's case was covered by the provisions of the KVSS.

5. On 13/15th January, 1999, the petitioner also filed appeals before the Commissioner of Income-tax (Appeals) or before the Income-tax Appellate Tribunal after 1st September 1998 in respect of A.Ys. 1980-81, 1981-82, and 1988-89 to 1993-94 in respect of the assessments under the Income-tax Act as well as under the Wealth-tax Act. The details about the appeals including the assessment year, the amount of tax involved, the amount of interest and penalty involved etc. are set out in a statement which is annexed to this judgment at Annexure "B".

After filing the appeals, in the last week of January 1999 the petitioner also filed declarations under the KVSS in respect of the assessment years which were the subject matter of those appeals.

6. By his orders dated 15/22/23rd February 1999 and 5th March 1999, the respondent acting as the Designated Authority under the KVSS accepted the petitioner's declarations which were filed in pending appeals in respect of the above assessment years, but by his orders dated 9.2.1999 rejected the declarations in the pending revision applications. The said orders dated 9.2.1999 are under challenge in the present petition. The petition was filed on 22.3.1999 and during pendency of the present petition, the respondent rejected the petitioner's applications for condonation of delay and on that basis dismissed the petitioner's revision applications on 31.3.2000.

7. The major contention of the petitioner in the present petition is that when the tax arrears in the petitioner's case were determined before 31st March 1998 and the petitioner's revision applications were pending on 28/29th December 1998 when the declarations under the KVSS were filed, the petitioner satisfied all the requisite conditions for availing the benefits under the KVSS and, therefore, the respondent acted illegally in rejecting the petitioner's declarations.

The second major ground urged in the petition is that the petitioner had also preferred appeals for A.Y. 1980-81, 1981-82, 1993-94 and some of the earlier years under the Income-tax Act as well as under the Wealth-tax Act. Those appeals were also filed belatedly beyond the period of limitation. The respondent, however, accepted the petitioner's declarations in pending appeals which were time barred, but the respondent illegally rejected the petitioner's declarations in pending revision applications.

8. In response to the notice issued by this Court, affidavit in reply dated 15th April 1999 came to be filed by the Commissioner of Income-tax, Rajkot. In the affidavit in reply, a reference is made to the provisions of the KVSS as contained in the Finance (No. 2) Act, 1998 and thereafter the following averments and submissions are made :-

"2.2 The two main conditions precedent for eligibility for the benefits of KVSS were :-

(i) Existence of outstanding tax arrears as on 31.3.98; and

(ii) Pendency of dispute in respect of the relevant assessment by way of an Appeal or Reference or Revision or Writ, etc. as on the date of Declaration.

2.3 The deponent submits that Income Tax arrears of about Rs.2.65 Crores and Wealth Tax arrears of about Rs.3.64 Crores (Total Rs.6.29 Crores) pertaining to various assessment years between A.Y. 1980-81 to 1993-94, were outstanding against the petitioner.

2.4 The Income Tax and Wealth Tax assessments relating to all the above assessment years had already become final, except for income-tax assessment for A.Y. 1981-82 and Wealth-tax assessment for A.Y. 1993-94 long before the commencement of the KVSS, either because the petitioner had not filed the appeals before the concerned appellate authorities, or because his appeals were dismissed due to non-payment of self assessment tax, etc. The time limit for filing of further appeal had also long since expired.

2.5 The deponent submits that recovery proceedings under the law were in progress since long, for realization of these tax arrears by auction of the immovable properties and a part of the total arrears against the petitioner had already been realized by auction of his properties. The outstanding tax arrears mentioned in paragraph 2.2 above, were after adjustment of an amount of Rs.2.88 Crores, realized on 6.11.96, from auction sale of some land plots at Jamnagar. In connection with these recovery proceedings, the petitioner had also filed a Civil Suit before the Civil Court, Jamnagar, and the matter relating to auction proceedings also came before the Hon'ble Gujarat High Court in Civil Revision Application No. 340 of 1994, decided on 28.11.95. The petitioner thereafter filed a Special Leave Petition before the Hon'ble Supreme Court.

2.6 The deponent therefore submits that, the income-tax and wealth-tax assessment proceedings for all the years from A.Ys. 1980-81 to 1993-94, except for income-tax assessment for A.Y. 1981-82 and wealth-tax assessment for A.Y. 1993-94, had become final, long before the commencement of the KVSS, and the matters relating to recovery by auction has reached upto the Hon'ble Supreme Court."

It is, therefore, submitted that declarations under the KVSS filed immediately after belatedly filing revision applications after a number of years merely for taking the benefit of the KVSS cannot be treated as pending revisions as provided in Section 95(1)(c).

Rejoinder affidavit has also been filed by the petitioner.

9. At the hearing of the petition, Mr KH Kaji, learned counsel for the petitioner-assessee has raised the following contentions:-

9.1 The petitioner fulfilled both the conditions precedent for eligibility of the benefits under the KVSS. The petitioner had outstanding tax arrears as on 31st March 1998. The revision applications filed by the petitioner for the relevant years were pending on the date when the declarations were filed within the time limit prescribed by Section 89. Hence, the petitioner was entitled to get benefit of the KVSS.

Strong reliance has been placed on the decision of the Apex Court in Mela Ram & Sons vs. CIT, (1956) 29 ITR 607, SB Jain, ITO vs. Mahendra, (1972) 83 ITR 104 and Raja Kulkarni vs. State of Bombay, AIR 1954 SC 73 in support of the petitioner's contention that "pendency" of the revision applications was required to be "factual pendency" irrespective of the fact whether the delay in filing the revision applications was ultimately condoned or not.

Strong reliance has also been placed on the decision of this Court in Sheth Enterprises (P) Ltd. vs. Commissioner of Customs, 154 CTR 195 and the decision of the Kerala High Court in Lukkose John Thoppil vs. CIT, (2000) 242 ITR 1 wherein the Courts had an occasion to consider the provisions of the KVSS in respect of a declaration under the KVSS filed in a pending appeal which was also time barred, and in respect of the declarations under the KVSS filed in a revision which was subsequently held to be not maintainable.

9.2 Moreover, it is submitted that the respondent in his capacity as the Designated Authority under the KVSS was not entitled to look into the merits of the delay condonation applications filed in the revision applications under Section 264, as the Designated Authority under the KVSS cannot exercise the powers of the revisional authority under Section 264 of the Income-tax/Section 25 of the Wealth-tax Act, even if the same incumbent happens to hold both the posts. In support of this contention, reliance is placed on the decision of this Court in Gufic Pharma Ltd. vs. JG Arora, (1999) 238 ITR 835.

10. On the other hand, Mr BB Naik, learned standing counsel appearing for the respondent-revenue has vehemently opposed the petition and made the following submissions:-

10.1 The object of the KVSS was to settle pending disputes. Hence, revisions applications had to be pending on 1st September 1998 when the KVSS came into force and also on the date of filing the declarations under the KVSS. Since the revision applications were not pending on 1st September 1998, the revision applications cannot be said to be "pending". Strong reliance has been placed on the decisions of the Karnataka High Court in Gopal Films vs. Dy.CIT, (1999) 237 ITR 655 and of the Calcutta High Court in Paresh Premji Rajda vs. CIT, (1999) 239 ITR 11 in support of his submission that the

KVSS was introduced to resolve pending disputes and not to create artificial "pendency" of disputes for the purpose of giving benefits to the assessees whose assessments had become final long before coming into force of the KVSS.

It is also submitted that when there was gross delay in filing of the revision applications, before condonation of said delay, the revision applications cannot be said to be pending.

10.2 There is considerable difference between an appeal and a revision. The remedy of filing an appeal is available to an assessee as a matter of right whereas the remedy of filing a revision application under Section 264 is a discretionary remedy and, therefore, acceptance of the petitioner's declarations under the KVSS in appeals cannot clinch issue in favour of the petitioner in the matter of declarations under the revision applications also.

10.3 The petitioner's appeals filed against the assessment orders for the relevant assessment years (Statement Annexure "A") were already dismissed in the years 1992-1993 for non payment of self assessment tax and, therefore, the so-called revision applications filed in December, 1998 were not bona fide. In fact, the recoveries were started earlier and the tax dues of Rs. 2.88 Crores were already recovered from the petitioner by auctioning the petitioner's lands.

11. Before dealing with the rival submissions, it is necessary to set out the relevant provisions of the KVSS as contained in the Finance (No. 2) Act, 1998.

"Short title and commencement.

86.(1) This Scheme may be called the Kar Vivad Samadhan Scheme, 1998.

(2) It shall come into force on the 1st day of September, 1998.

Definitions

87. In this Scheme, unless the context otherwise requires,-

(f) "disputed tax" means the total tax determined and payable, in respect of an

assessment year under any direct tax enactment but which remains unpaid as on the date of making the declaration under section 88;

(m) "tax arrears" means,-

(i) in relation to direct tax enactment, the amount of tax, penalty or interest determined on or before the 31st day of March, 1998 under that enactment in respect of an assessment year as modified in consequence of giving effect to an appellate order but remaining unpaid on the date of declaration.

(n) all other words and expressions used and not defined in this Scheme but defined in any direct tax enactment or indirect tax enactment shall have the meanings respectively assigned to them in those enactments.

Settlement of tax payable

88. Subject to the provisions of this Scheme, where any person makes, on or after the 1st day of September, 1998 but on or before the 31st day of December, 1998, a declaration to the designated authority in accordance with the provisions of section 89 in respect of tax arrear, then, notwithstanding anything contained in any direct tax enactment or indirect tax enactment or any other provision of any law for the time being in force, the amount payable under this Scheme by the declarant shall be determined at the rates specified hereunder, namely :-

(a) where the tax arrear is payable under the Income-tax Act, 1961 (43 of 1961),-

(i) ... ...

(ii) in the case of a declarant, being a person other than a Company or a firm, at the rate of thirty per cent of the disputed income;

(iii) in the case where tax arrear

includes income-tax, interest payable or penalty levied, at the rate of ... ... thirty per cent of the disputed income for the persons referred to in clause (ii);

(iv) in the case where tax arrear comprises only interest payable or penalty levied, at the rate of fifty per cent of the tax arrear;

(v) ... ...

Particulars to be furnished in declaration

89. A declaration under section 88 shall be made to the designated authority and shall be in such form and shall be verified in such manner as may be prescribed.

Time and manner of payment of tax arrear.

90.(1) Within sixty days from the date of receipt of the declaration under section 91, the designated authority shall, by order, determine the amount payable by the declarant in accordance with the provisions of this Scheme and grant a certificate in such form as may be prescribed to the declarant setting forth therein the particulars of the tax arrear and the sum payable after such determination towards full and final settlement of tax arrears;

... ...
... ...

(2) The declarant shall pay, the sum determined by the designated authority within thirty days of the passing of an order by the designated authority and intimate the fact of such payment to the designated authority along with proof thereof and the designated authority shall thereupon issue the certificate to the declarant.

(3) Every order passed under sub-section (1), determining the sum payable under this Scheme, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the

direct tax enactment or indirect tax enactment or under any other law for the time being in force.

(4) Where the declarant has filed an appeal or reference or a reply to the show cause notice against any order or notice giving rise to the tax arrear before any authority or Tribunal or Court, then, notwithstanding anything contained in any other provisions of any law for the time being in force, such appeal or reference or reply shall be deemed to have been withdrawn on the day on which the order referred to in sub-section (2) is passed:

No refund of amount paid under the Scheme

93. Any amount paid in pursuance of a declaration made under section 88 shall not be refundable under any circumstances.

Scheme not to apply in certain cases

95. The provisions of this Scheme shall not apply -

(i) in respect of tax arrear under any direct tax enactment,-

(a) ... ...
(b) ... ...

(c) to a case where no appeal or reference or writ petition is admitted and pending before any appellate authority or High Court or the Supreme Court on the date of filing of declaration or no application for revision is pending before the Commissioner on the date of filing declaration."
(emphasis supplied)

12. The first requirement for entitlement to the benefit under the KVSS viz.- existence of tax arrear as on 31st March 1998 which remain unpaid on the date of filing the declaration under Section 88 - was complied with in the instant case. The serious controversy is about the second condition regarding "pendency" of revision applications in respect of the relevant assessment years as on the date of the declarations. The learned counsel for the assessee has relied on the

decisions of the Apex Court interpreting the expression "pending appeals" in the cases under the Industrial Disputes Act and under the Indian Income-tax Act, 1922 and the Income-tax Act, 1961 and the decisions interpreting the expression "pending proceedings".

12.1 In Raja Kulkarni vs. State of Bombay, AIR 1954 SC 73, the controversy arose in the following context :-

Section 24(b) of the Industrial Disputes Act, 1947 prohibits a workman, who is employed in any industrial establishment, from going on strike during the pendency of an appeal before the Appellate Tribunal. Section 25 renders, a strike and a lockout as illegal if it is declared, commenced or continued in contravention of the provisions of Section 24. Section 27 provides for penalty for contravention of Section 25 which may even lead to imprisonment for six months. The question before the Hon'ble Supreme Court was whether the appellants in that case rendered themselves liable to prosecution under Section 27, because they instigated the strike while the appeal was pending before the Appellate Tribunal. The contention raised on behalf of the appellant-workmen and the finding given by the Hon'ble Supreme Court are set out hereunder in Their Lordships' words :-

"It is contended that Section 24 contemplates the pendency of a valid or competent appeal but, as no valid or competent appeal under the law was pending, the appellants committed no offence under Section 27. We are unable to accept this contention. Section 24 on a plain and normal construction requires for its application no more than that an appeal should be pending and there is nothing in the language to justify the introduction of the qualification that it should be valid or competent.

Whether the appeal is valid or competent is a question entirely for the Appellate Court before whom the appeal is filed to determine, and this determination is possible only after the appeal is heard, but there is nothing to prevent a party from filing an appeal which may ultimately be found to be incompetent, e.g. when it is held to be barred by limitation or that it does not lie before that Court or is concluded by a finding of fact under Section 100 of the Civil Procedure Code. From the mere fact that such an appeal is held to be unmaintainable on any ground

whatsoever, it does not follow that there was no appeal pending before the Court."

12.2 In Mela Ram & Sons vs. CIT, (1956) 29 ITR 607, the Apex Court held that an appeal presented out of time is as much an appeal as the one presented within time. The controversy in that case was in view of the provisions of Sections 30(2) and 31 of the Income-tax Act, 1922. Section 30(2) required filling of the appeal within a stipulated time with the power conferred on the first appellate authority (AAC) to condone the delay in filing the appeal beyond the stipulated time. Section 31 laid down the cases in which further appeal would lie. The question was if the first appellate authority (i.e. Appellate Assistant Commissioner) passes an order rejecting the application for condonation of delay, whether an appeal would lie under Section 31 against such an order. The contention raised before the Apex Court was - it is only after the Appellate Assistant Commissioner would condone the delay that the appeal before him would come into existence and, therefore, if he refuses to condone the delay in filing of the appeal before him, the order passed by him is not in appeal and, therefore, no further appeal would lie under Section 31 of the Act. In short, the contention was that there is no appeal unless it is presented in time and if presented beyond the time, unless the delay is excused. The Apex Court rejected the said contention and held that even where an appeal is filed beyond the prescribed period of limitation, it is also an appeal and, therefore, the order rejecting the application for condonation of delay is also an order passed in the appeal.

12.3. In S.B. Jain, ITO vs. Mahendra, (1972) 83 ITR 104, notice for reopening the assessment issued under Section 34(1)(a) of the Indian Income-tax Act, 1922 was pending when the Income-tax Act, 1961 came into force on 1st April 1962. Ultimately that notice came to be discharged by the authority after 1st April 1962 and thereafter the Income-tax Officer issued another notice for reopening the assessment under Section 148 of the Income-tax Act, 1961. The assessee invoked Section 297 of the 1961 Act which provided that notwithstanding the repeal of the 1922 Act where in respect of any assessment year any income chargeable to tax had escaped assessment within the meaning of that expression in Section 147 and no proceedings under Section 34 of the 1922 Act in respect of any such income are pending at the commencement of 1961 Act (1st April 1962), a notice under Section 148 may be issued with respect to that assessment

year and all the provisions of this Act shall apply accordingly. The assessee, therefore, contended that the proceedings under Section 34 of the 1922 Act were pending on 1st April 1962 and, therefore, the proceedings under Section 148 read with Section 297 of the 1961 Act could not have been commenced. The reply of the revenue was that since the notice under Section 34 of the 1922 Act was an invalid notice on the ground that it was barred by limitation, the proceedings initiated on the basis of that notice should be considered as not pending in the eye of law. Rejecting the contention of the revenue, the Apex Court held as under :-

"The only question for decision in these appeals is whether the proceedings initiated by the notice under section 34(1)(a) of the 1922 Act were pending at the time when the new Act came into force. It is not denied that such proceedings were factually pending. But, what was contended by Mr. B. Sen, learned counsel for the department, was that notice being an invalid notice on the ground that that was barred by limitation, the proceedings initiated on the basis of that notice should be considered as not pending in the eye of law. We are unable to accept this contention. What section 297(2)(ii) requires is the factual pendency of a proceeding under section 34 of the repealed Act. The question whether that proceeding was barred by limitation or not is irrelevant. It is not denied that those proceedings were initiated by a competent authority. Those proceedings were quashed for the reason that notice under section 34 of the 1922 Act was issued beyond the time prescribed by law. Hence, it cannot be said that no proceeding under section 34 of the 1922 Act either factually or legally was pending at the time when the new Act came into force."

(emphasis supplied)

13. The aforesaid authorities, therefore, explain the expression "pending" in no uncertain terms that "pending" means "factually pending" and that merely because the notice or proceedings were not issued or commenced within the period of limitation, that does not detract from the fact that the proceedings were "pending".

14. Mr Naik, learned counsel for the respondent, however, submitted that unless the delay in filing a revision application is condoned, it cannot be said that

the revision application was pending because the revision application can be said to have been instituted only after the delay is condoned. In this connection, reference is made to the provisions of sub-section (3) of Section 264 of the Income-tax Act, 1961 which read as under :-

"264(3) In the case of an application for revision under this Section by the assessee, the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier :

Provided that the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period."

Reliance is also placed on the decision of the Karnataka High Court in Gopal Films vs. Dy.CIT, 237 ITR 655. Reliance is also placed on the following observations in Gufic Pharma Ltd. vs. JG Arora, (1999) 238 ITR 835 :-

"It was also not the case that the revision had not come into existence within the period of limitation, so as to suggest that the assessee had waived his right to challenge that order."

15. The submission cannot be accepted. Similar provisions are to be found in Sections 249 and 253 of the Act which also prescribe the period of limitation for filing first appeal before the Appellate Commissioner and the second appeal before the Income-tax Appellate Tribunal. Those provisions, after prescribing the period of limitation, also confer the power on the appellate authority to condone the delay where sufficient cause is shown. The submission about waiver shall be considered a little later (in para 17).

Section 95(1)(c) of the KVSS uses the expression "admitted and pending" in so far as the appeals are concerned, but uses only the word "pending" as far as the revisions are concerned. The attempt made by Mr Naik, for the revenue to distinguish the aforesaid authorities of the Apex Court would have borne fruit if the Legislature had used in Section 95(1)(c) the expression "admitted and pending" for revisions and only "pending"

for appeals.

16. The expression "admitted and pending appeals" under the KVSS itself came up for interpretation of this Court in Sheth enterprises (P) Ltd. vs. Commissioner of Customs, (1999) 154 CTR 195. The order in original was passed on 25th May 1998. The appeal against that order was filed on 17th September 1998 beyond the period of limitation. The declaration under the KVSS was filed on 3rd November 1998 and the appeal was thereafter dismissed as time barred on 9th December 1998. The declaration under the KVSS was rejected by the designated authority in that case on 29th February 1999 on the ground that the appeal was time barred and, therefore, it could not be said to have been "admitted and pending" on the date of filing of the declaration. Relying on the decision of the Apex Court in Melaram & Sons, (1956) 29 ITR 607, a Division Bench of this Court held that the appeal was "admitted and pending" on the date of filing of the declaration and that it made no difference that the appeal was treated as time barred and that ultimately the appeal came to be dismissed on that ground. This Court directed the designated authority to accept the declaration as complying with the requirements of the KVSS and to extend the assessee in that case the benefit of the KVSS.

17. In Gufic Pharma Ltd. vs. JG Arora, (1999) 238 ITR 835, another Division Bench of this Court held that the following were the conditions precedent for accepting the declarations under the KVSS :-

(1) tax arrears determined on or before 31.3.1998; and
(2) pending appeal/revision/writ petition on the date of the declaration.

In that case, the designated authority held that the revision application had no merit and, therefore, the declaration under the KVSS filed in such a revision cannot be accepted. Disapproving the said approach of the designated authority, this Court held as follows :-

"It is not the condition for operation of the Kar Vivad Samadhan Scheme that the appeal, revision or reference should have come before March 31, 1998, or before the coming into force of the Scheme. It was not intended to curtail the right of any aggrieved party to prosecute his remedies under law.

The mere fact that the assessee had not filed a revision prior to the coming into force of the Kar Vivad Samadhan Scheme, in the facts of the case, could not be held against the assessee. If he can legitimately act within the precincts of the statute for pursuing a bona fide dispute, he can also claim the benefit of the scheme promulgated by Parliament when necessary conditions for availing of such benefit have been shown to exist. As on the date of declaration, he had tax arrears which stood determined prior to March 31, 1998, and he had also a dispute pending before the Commissioner of Income-tax by way of revision under section 264 which could not have been ignored by him. The assessee having made the declaration, fulfilling both the conditions as on the date of the declaration, could not have been denied the benefits of the Scheme.

The mere fact that the revision authority also happens to be the designated authority, he cannot merge the two distinct jurisdictions and obligations into one and reflect one order into another. As a designated authority, he has jurisdiction to see only the existence of the conditions which make the Kar Vivad Samadhan Scheme operative in the case .... whether the revision has merit or will be successful, is not his domain. That is the domain of the revising authority. That jurisdiction he may not be called upon to exercise if on determining the amount payable under the scheme the assessee deposits the same within the time prescribed. Because in such event the revision is deemed to be withdrawn under section 90(4) of the Finance (No. 2) Act of 1998."

We are of the view that the question whether the assessee had waived his right to prefer an appeal or revision is also a matter to be considered by the appellate/revisional authority (and not by the designated authority) while deciding the application for condoning delay in filing the appeal/revision.

18. In Lukkose John Thoppil vs. CIT, (2000) 242 ITR 1, the petitioners were partners of a firm which was an assessee under the Act. The Assessing Officer revised the assessment of the partners and passed orders dated 25.9.1997 under Section 155 of the Act redetermining the tax, surcharge and interest payable by the petitioners

for A.Y. 1992-93. The revised assessment included interest under Sections 234A, 234B and 234C of the Act. Aggrieved by the levy of interest, the petitioners filed revisions under Section 264 of the Act before the Commissioner of Income-tax who also was the designated authority under the KVSS, 1998. After filing the revisions, the petitioners also filed before the respondents declarations under the KVSS. When the revisions came up for hearing, the petitioners requested to keep the revisions pending till decisions are taken on the declarations under the KVSS. The respondent-CIT by his order dated 14.12.1998 held that the revision petitions filed by the petitioners were not maintainable and cannot be treated as valid revision petitions and, therefore, the declarations under the KVSS cannot be accepted.

The assessee contended before the Kerala High Court that the only question that has to be looked into is whether the revisions were pending at the time when the declarations were filed and that the designated authority is not competent to go into the question whether the revision petitions are maintainable or any relief can be granted in the revision petitions. According to the revenue, the revisions were not maintainable because the assessee did not file any appeal to challenge the assessment of tax, but only filed the revisions to challenge the interest, but the levy of interest is automatic and, therefore, no relief can be granted against levy of interest in a revision under Section 264 of the Act. Hence, the revision petitions were not maintainable and, therefore, at the time when the declarations under the KVSS were filed, there were no appeals or revisions.

After holding that the revision petitions were maintainable because the petitioners had challenged the calculation of interest which was not outside the purview of Section 264, the Kerala High Court examined the controversy about the interpretation of the provisions of Section 95(c) accepted the view taken by this Court in Gufic Pharma Ltd. (supra) and held as under :-

> "I am of the view that for the disposal of the declarations under the Kar Vivad Samadhan Scheme what is necessary is to find out whether there is a revision or appeal pending. ... ... In this case, the revision petitions were filed on October 28, 1998. The declarations were filed on November 2, 1998. Thus, it cannot be said that the revision petitions were not pending on

the date of filing of the declarations. The further question whether the revision petitions filed were maintainable or any reliefs could be granted in the revision petitions, according to me, is not relevant. The object of the scheme appears to be to put an end to litigation and also to see that the tax is collected from the assessee. According to me, to read the word "revision" in section 95(c) of the Scheme as a revision which is maintainable or in which relief could be granted will be amounting to re-writing the section. It is one of the cardinal principles of interpretation of statutes that unless there is an intention to the contrary, the words in a statute should be given their ordinary meaning."

(emphasis supplied)

19. Now we will refer to and deal with the decisions cited by Mr Naik for the revenue on this particular aspect.

19.1 In Gopal Films, 237 ITR 655, on the date of commencement of the KVSS, no revision was pending before any authority or Court in regard to any tax arrear of the petitioner relating to assessment year 1995-96. The petitioner, however, filed a revision on 5.1.1999 under Section 264 of the Act before the Commissioner of Income-tax challenging the order dated 29.3.1996 passed under Section 143(1)(a) of the Act. As the application was filed beyond the limitation period of one year, the petitioner sought condonation of delay on the ground that the petitioner's advocate was sick for a prolonged period and subsequently expired on 7.8.1996 and, thereby could not attend to the affairs of the petitioner.

After filing of the said revision on 5.1.1999, the petitioner also filed a declaration under the KVSS on 6.1.1999 claiming the benefit under the Scheme, by contending that the revision application was pending on the date of declaration. The designated authority rejected the declaration on the ground that the revision application was filed beyond the period of limitation and, therefore, was not maintainable. The assessee challenged that order. Negativing the challenge, the Karnataka High held as under :-

"The contention of the petitioner that "admission" is not a condition precedent to hold that the revision petition is "pending" for

> purposes of section 95 of the Finance (No. 2) Act, 1998, may be correct in so far as revisions initiated by the Commissioner on his own motion and revision proceedings initiated on an application made by the assessee within the period of limitation of one year provided under sub-section (3) of section 263 are concerned. But, where a revision is filed beyond time, unless the delay is condoned, it cannot be said that the revision is pending. In such a case only when it is admitted by condoning the delay, the revision proceedings can be said to be pending; and on condonation of delay by the Commissioner and admission, the pendency would relate back to the date of filing of the revision petition. The proviso to sub-section (3) of section 264 of the Act, in terms provides that where there is delay in filing a revision petition, the Commissioner should admit the revision by condoning the delay, on sufficient cause being shown. In this case, there is a long unexplained delay and there is no condonation of such delay. Therefore, it cannot be said that a revision was pending on January 6, 1999. hence, mere filing of a belated application seeking revision, on January 5, 1999, will not entitle the petitioner to contend that a litigation was pending in regard to the assessment year 1995-96 and that, therefore, a declaration could be made under section 88.

19.2 Similarly, the Calcutta High Court has laid down the same principle in Paresh Premji Rajda vs. CIT, (1999) 239 ITR 11, and held that as along as the application under Section 5 of the Limitation Act, 1963 has not been allowed, the appeal, revision or for that matter reference shall be taken as non est. The proviso to Section 264 of the Income-tax Act, 1961 is pari materia to Section 5 of the Limitation Act, 1963 and, therefore the revision application where delay is not condoned will have to be treated as non est. Therefore, on the date of declaration under the KVSS, there would be no revision pending.

In that case, a revision application under Section 264 of the Act was filed by the assessee before the Commissioner on 29.1.1999 for challenging the assessment order under Section 143(3) of the Act passed and served on the assessee on 24.2.1993. On the same day, the assessee also filed a declaration under the

KVSS. The revision of the assess under Section 264 of the Act was rejected by order dated 22.2.1999 on the ground of delay of six years and thereupon the Commissioner held that when the revision application was not pending on the date of declaration, the declaration could not be considered under the Scheme of 1998.

19.3 The observations made in the aforesaid decisions obviously support the revenue. However, none of the aforesaid three decisions of the Apex Court interpreting the expression "pending appeals" or "pending proceedings" were brought to the notice of Their Lordships of the Karnataka and the Calcutta High Courts. In absence of the expression "admitted and pending revisions" we fail to appreciate the reasoning of the above High Courts that "pending revisions" would mean revisions filed within the period of limitation or where filed beyond time, delay is excused. This interpretation flies in the face of the three decisions of the Hon'ble Supreme Court in favour of the assessee.

19A. Mr Naik for the revenue submitted that since the appeals filed by the petitioner for the relevant assessment years were earlier dismissed for non deposit of tax, the revisions were not maintainable by virtue of the provisions of Section 264(4) which reads as under :-

"264(4) The Commissioner shall not revise any order under this section in the following cases -

(a) where an appeal against the order lies to the Deputy Commissioner (Appeals) or to the Commissioner (Appeals) or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal, the assessee has not waived his right of appeal; or

(b) where the order is pending on an appeal before the Deputy Commissioner (Appeals); or

(c) where the order has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal."

Mr Kaji submits that this issue is already

judicially concluded in favour of the assessee.

19B. We find considerable substance in the submission of Mr Kaji. In CC Jayaram vs. CIT, (1994) 207 ITR 662, the expression "subject of appeal" in Section 264(4) of the Act came up for interpretation. The Kerala High Court held that an order can be said to be the "subject of an appeal" within the meaning of Section 264(4) of the Income-tax Act, 1961, only if the appeal was considered and disposed of on merits; an appeal which was dismissed as withdrawn at the instance of the assessee or where an appeal was dismissed on the ground that the same was incompetent or where an appeal was dismissed as barred by limitation or where the appeal was dismissed for non-payment of undisputed tax as a condition precedent for entertaining the appeal cannot be said to have been "subject of an appeal". "Subject of an appeal" means subject of an effective appeal. For arriving at this conclusion, the Kerala High Court relied on the decision of the Supreme Court in Board of Revenue vs. Raj Bros. Agencies, (1973) 31 STC 434 where the identical expression "the order made subject of an appeal" was construed by the Apex Court to mean "subject of an effective appeal". Though in a slightly different context, in Commissioner of Wealth-tax vs. Mrs Kasturbhai Walchand, (1989) 177 ITR 188, the Apex Court has held that where an appeal is filed (even by the revenue) before the Appellate Tribunal against an order of the Appellate Assistant Commissioner, the impugned order merges in the order of the Appellate Tribunal when the appeal is disposed of on merits and then the revision under Section 25 of the Wealth-tax Act would not lie against the order of the Appellate Assistant Commissioner even at the instance of the assessee.

Following the said decisions, the contention raised on behalf of the revenue against maintainability of the revisions is not sustained.

20. That, however, is not the end of the valiant attempt of Mr Naik for the revenue, as the debate then shifted to the legislative intent for framing the Scheme.

20.1 Mr Naik, learned counsel for the revenue has vehemently submitted that the assessee had allowed the assessment orders to become final long back in the years 1992-1993 when the petitioner's appeals were dismissed for failure to predeposit the self assessed tax. It is, therefore, submitted that it was not intended that the benefit of the KVSS should be given to tax defaulters who allowed the assessment orders to become final long back

and thereafter upon coming into force of the KVSS they create dishonest litigation or create artificial pendency by filing grossly belated revision applications and then file declarations under the KVSS. The scheme was evolved only to settle the pending disputes and not to create new disputes after coming into force of the KVSS.

20.2 Mr Naik has relied on the following paragraph from the speech of the Finance Minister while introducing the Scheme :-

> "Litigation has been in the bane of both direct and indirect taxes. A lot of energy of the Revenue Department is being frittered in pursuing large number of litigations pending at different levels for long periods of time. Considerable revenue also gets locked up in such disputes. Declogging the system will not only incentivise honest taxpayers, enable Government to realize its reasonable dues much earlier but coupled with administrative measures, would also make the system more userfriendly. I, therefore, propose to introduce a new Scheme called Samadhan."
>
> (emphasis supplied by Mr Naik)

20.3 Mr Naik strongly relied on the decisions of the Karnataka High Court in Gopal Films vs. Dy.CIT, (1999) 237 ITR 655 and of the Calcutta High Court in Paresh Premji Rajda vs. CIT, (1999) 239 ITR 11 and submitted that the object of the KVSS has been correctly appreciated by the Karnataka High Court in the following words::-

> "The object of the KVS Scheme is to realize the revenue locked up in litigations pending at different levels, by giving incentive to honest tax payers. Having regard to the provisions of the KVS Scheme, pendency of a proceeding either by way of appeal or revision or reference or writ petition should be a bona fide pendency. When a matter has attained finality and when no litigation is pending, creation of an artificial pendency, after the announcement of the scheme, merely to obtain the benefit of the scheme is impermissible. Any attempt to create such artificial pendency merely for availing of the benefit of the KVS Scheme, would defeat and dilute the scheme."
>
> (from Gopal Films -emphasis supplied)

20.4 It is, therefore, submitted on behalf of the revenue that the object of the scheme was only to dispose of pending litigations and not to encourage creation of new litigations. When we pointed out that this would mean adding some words to Section 95(1)(c), the learned counsel for the revenue heavily relied on the decision of the Apex Court in CWS (India) Ltd. vs. CIT, (1994) 208 ITR 649 in support of his contention that the Court must look at the intention of the Legislature and that while doing so, it is open to the Court even to modify the language of the statute.

21. On the other hand, Mr KH Kaji, learned counsel for the assessee has submitted that the legislative intent is to be gathered from the provisions of the scheme as contained in the Finance (No. 2) Act, 1998. It is submitted that if the Legislature had intended that the appeal/revision/writ petition etc. should have been pending on the date of commencement of the scheme, the Legislature would have said so in clear words just as the Legislature has defined the expression "tax arrear" in Section 87(m) as determined on or before the 31st day of March, 1998 and remaining unpaid on the date of making a declaration under Section 88. It is submitted that if the legislative intent was what the revenue contends, Section 95(1)(c) would have accordingly provided that the scheme shall not apply in respect of the tax arrear under any direct tax enactment to a case where no appeal or reference or writ petition or application for revision was pending on the date of commencement of the scheme and also on the date of filing declaration.

It is further submitted on behalf of the assessee that the object of the scheme was not just to settle the pending disputes i.e. litigations pending on the date of commencement of the scheme but the main object of the scheme was to collect revenue. Reference is also made to the decisions of the Kerala High Court in the case of Lukkose John Thoppil vs. CIT, 242 ITR 1 taking the view that the object of the KVSS contained in the Finance (No. 2) Act, 1998 was not only to put an end to the litigation but also to see that the tax is collected from the assessees.

It is further submitted that the revenue having accepted this view of the Scheme in the appeals filed by this very assessee (the petitioner herein), which appeals were also filed after considerable delay and after the date of commencement of the scheme, it is not open to the revenue to contend to the contrary in respect of the revisions filed under similar circumstances.

22. Having heard the learned counsel for the parties, we do find that the petition involves an interesting debate about the object of the Scheme. The view canvassed by Mr Naik for the revenue is certainly a plausible view, the one which commended itself to the Karnataka and Calcutta High Courts in the aforesaid decisions in Gopal Films (Supra) and Paresh Premji Rajda (Supra) respectively.

23. But we find that the interpretation being canvassed by the revenue involves addition of words to the statute by inserting the words "as on the date of commencement of the scheme as also" before the words "on the date of filing declaration" at two places in Section 95(i)(c) and, therefore, the said provision would be required to be redrafted as under (additions underlined) :-

"95. The provisions of this Scheme shall not apply -

(i) in respect of tax arrears under any direct tax enactment,-

(c) to a case where no appeal or reference or writ petition is admitted and pending before any appellate authority or High Court or the Supreme Court as on the date of commencement of the scheme as also on the date of filing of declaration or no application for revision is pending before the Commissioner as on the date of commencement of the scheme as also on the date of filing declaration."

In CWS (India) Ltd. vs. CIT, (1994) 208 ITR 649 relied upon by the revenue, the Apex Court rejected the contention of the assessee that in the case of taxing enactments, literal construction should be adopted and that the Courts should not try to mould or twist the language of the enactment for achieving the supposed intention of the Parliament. The Court hastened to add that while we agree that literal construction may be general rule in construing taxing enactments, it does not mean that it should be adopted even if it leads to a discriminatory or incongruous result. Interpretation of statutes cannot be a mechanical exercise. The object of all the rules of interpretation is to give effect to the object of the enactment having regard to the language used. The intention of the Parliament in enacting the

statute provisions can be gleaned from the memorandum explaining the provisions of the Finance Bill which sets out the object behind the clause. The Apex Court then referred to the well recognized rule of interpretation of statutes that where a literal interpretations leads to an absurd or unintended result, the language of the statute can be modified to accord with the intention of the Parliament and to avoid absurdity. The Court then quoted with approval the following passage from Maxwell's Interpretation of Statutes (12th Edition) :-

> "where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the Legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and interest of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

24. We are unable to accept the submissions made on behalf of the revenue for supplying the aforesaid words to provisions of Section 91(1)(c) for the reasons that follow.

25. The real question about legislative intent is whether the Legislature had intended that the benefit of the Scheme is not to be made available to an assessee who files time barred litigation after the date of commencement of the scheme i.e. after 1st September, 1998 for challenging the determination of tax made prior to 31st March 1998. The answer would have been in the affirmative if the Scheme was framed only with a view to settling the "existing" disputes. The submission of Mr Naik for the revenue is that the nomenclature "Kar Vivad Samadhan Scheme" itself indicates the only object of the scheme and, therefore, the Legislature could not have intended to extend an invitation to the assessees to file

belated appeals/revisions only in order to avail of the benefit of the Scheme. Even though it may be a plausible view of the object of the KVSS, looking to the language employed by the Legislature, we are of the opinion that the other view is a more plausible view - the one being canvassed on behalf of the assessee that the legislative intent was primarily to collect revenue and, therefore, the recovery of tax arrears, delayed for whatsoever reason, was to be expedited - in the process, an assessee filing belated litigation after the date of commencement of the Scheme for challenging the determination of tax made any time on or before 31st March 1998 and soon giving commitment to make immediate payment of tax/interest/penalty at concessional rate specified in the Scheme was not to be kept out of the Scheme.

Apart from the decision of the Kerala High Court in Lukkose John Thoppil (2000) 242 ITR 1 where the aforesaid view canvassed by the assessee was accepted, in Killick Nixson Ltd. vs. Dy.CIT, (2001) 248 ITR 17, the Bombay High Court has also observed that the Kar Vivad Samadhan Scheme is essentially introduced to recover the taxes at the earliest point of time. It is essentially a recovery based Scheme. The predominant object is to recover the taxes as early as possible.

Similar view is taken by the Delhi High Court in Jyotsna Holdings vs. Designated Authority, (2000) 243 ITR 246 that the Scheme is meant to provide a quick and voluntary settlement of tax dues outstanding as on March, 31, 1998 by offering waiver of a part of arrears of tax, interest and penalty and providing immunity against institution of prosecution and imposition of penalty. The central idea of the Kar Vivad Samadhan Scheme is the existence of "tax arrear" as on 31.3.1998 and as on the date of declaration and pendency of dispute before the appropriate forum as on the date of filing of the declaration and culmination of such pending proceedings or dispute on payment of the amount determined under the Scheme.

26. Secondly, while we agree that the rule of interpretation enunciated in CWS (India) Ltd. (supra) will have to be adopted if literal construction of a statutory provision leads to a discriminatory or incongruous result or if it leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity which can hardly have been intended, in view of the possible interpretation that the Legislature was very keen to realize the tax arrears determined on or before 31st March, 1998, we do

not find any compelling necessity to hold that not inserting the words "on the date of commencement of the Scheme" in Section 95(1)(c) would reduce the Scheme to a nullity or would lead to a discriminatory or incongruous result or absurdity or inconvenience. Hence, in the case at hand, we do not see why the rule of literal interpretation should be given a go-bye. Very recently, in Padma Sundara Rao vs. State of T.N, 2002(3) SCC 533, the Apex Court has again cautioned that a casus omissus should not be readily inferred and that it cannot be

supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself.

27. Thirdly, in Gufic Pharma Ltd. 238 ITR 835, another Division Bench of this Court has already held that the conditions precedent for availing of the benefit under the KVSS are only two, namely, (1) tax arrears determined on or before 31.3.1998 and (2) pending appeal/revision/writ petition on the date of the declaration. It has been held therein that the mere fact that the assessee had not filed an revision prior to the coming into force of the KVSS cannot be held against the assessee.

28. Lastly and very significantly, the fact that the revenue had accepted the interpretation placed by the assessee on the provisions of Section 95(i)(c) and the declarations of the assessee under this very KVSS in belated appeals filed under the Income-tax Act as well as the Wealth-tax Act, wherein the amounts of tax, interest and penalty involved were much higher, also tilts the case in favour of the assessee.

29. In short, while Mr Naik may be justified in relying on the decision of the Apex Court in CWS (India) Ltd. vs. CIT, (1994) 208 ITR 649 for contending that it is open to the Court even to modify the language of the statute, we also have to consider what is the interpretation of the existing statutory provisions without any modification. If the legislative intent which may be culled out from such existing statutory provisions without any modification is a plausible one and that is the interpretation accepted by the revenue for accepting the KVSS declarations of this very assessee in appeals, we do not think that we would be justified in inferring a casus omissus and then supplying the same.

30. What tilts the balance in favour of the assessee is the fact that the revenue itself has accepted the

declarations made by the assessee under the same Scheme in January, 1999 in appeals which were also filed belatedly for challenging the assessments orders made in the year 1992 and even earlier. The revenue having accepted the interpretation in favour of the assessee in appeals filed under identical circumstances cannot be permitted to take the diametrically opposite view. We are conscious of the fact that some times the revenue may not carry the matter further where the amounts of tax/penalty are comparatively smaller.

However, the following figures (rounded off in lacs) clearly indicate that the revenue had accepted the declarations under the KVSS in respect of appeals filed in January, 1999 for challenging the assessment orders dated 29.3.1996 made under the Income-tax for A.Ys. 1992-93 and 1993-94 and similarly the appeals filed on 13.1.1999 for challenging the assessments orders dated 31.3.1992 under the Wealth-tax Act for A.Ys. 1988-89, 1989-90 and 1991-92 (as individual) and also as executor of late Digvijaysinhji for A.Ys. 1988-89 to 1990-91 and also the appeals filed on 13.1.1999 for challenging the assessment orders dated 29.3.1993 under the Wealth-tax Act for A.Y. 1990-91. A perusal of the statement (Annexure "B" to this judgment) giving the particulars about the appeals and the amounts of tax, interest and penalty involved therein indicates that as against the tax liability of Rs.116 lacs and interest and penalty liability of Rs.429 lacs aggregating to a total liability of Rs.545 lacs, by way of declarations under the KVSS filed by this very assessee (the petitioner herein) in the belated appeals under the Income-tax Act as well as Wealth-tax Act, the revenue had admittedly accepted the said declarations giving up the right to recover more than Rs.460 lacs on receiving only Rs. 85 lacs.

As against the aforesaid figures in case of appeals, as far as the declarations filed in revision applications are concerned, the total tax liability of the assessee under the Wealth-tax Act and the Income-tax Act for the relevant assessment years between 1984-85 and 1991-92 was about Rs.56 lacs plus interest and penalty of about Rs.212 lacs aggregating to a total liability of Rs.288 lacs against which the assessee has offered to pay Rs.95 lacs.

31. In response to a query from the Court as to on what basis the declarations filed in appeals filed in January, 1999 for challenging the assessment orders made between 1992 and 1996 were accepted by the department, Mr Naik stated that the designated authority had followed

the decisions dated 20.3.1995 of the Income-tax Appellate Tribunal in Appeal Nos. 392, 393 and 422/Ahd/1998 (M/s Harshal Chemicals, Vapi vs. The Income Tax officer, Ward-1, Vapi - A.Y. 1983-84) wherein the Tribunal gave the following reasoning while accepting the assessee's interpretation of Section 95(i)(c) :-

> "In our opinion, when the appeal had been filed with the proper fee and accepted and admitted by the Registry, even if it is barred by limitation, unless the same is rejected, the same is to be treated as appeal admitted and pending. For this proposition we refer to the decision of the Hon'ble Supreme Court in the case of Mela Ram and Sons vs. CIT, 29 ITR 607."

32. It is thus clear that an identical controversy had arisen between this very assessee and the revenue in case of appeals and the revenue had accepted the assessee's interpretation of Section 95(i)(c) that in view of the decision of the Hon'ble Supreme Court in Mela Ram & Sons vs. CIT, 29 ITR 607, the declaration could not be rejected merely on the ground that the declaration was filed in an appeal or other proceeding which was instituted beyond the period of limitation prescribed for filing such proceedings.

33. As already indicated above, we are unable to find any difference between appeal and revision so as to make the decision in case of declarations made under the KVSS in pending appeals inapplicable to the declarations made under the same Scheme in revision applications which were also similarly belated as the appeals were. As per the decision of the Hon'ble Supreme Court in Shankar Ramchandra Abhyankar vs. Krishnaji Dattatraya Bapat, AIR 1970 SC 1, appeals and revisions are part of the same appellate jurisdiction that the higher forum exercises for examining the legality of the orders passed by the subordinate Courts or fora. While, therefore, we agree with Mr Naik that acceptance of the petitioner's declarations under the KVSS in appeals cannot clinch the issue in favour of the petitioner on the question of object and interpretation of the statutory provisions of the KVS scheme, when this Court has found that the object and interpretiation of the Scheme canvassed by the assessee is more plausible than the one canvassed by the revenue, the acceptance of the declarations filed by this very assessee under the same Scheme in belated appeals filed after the date of commencement of the Scheme can certainly tilt the matter in favour of the assessee in the sense that the revenue had itself accepted the

interpretation canvassed by the petitioner in case of declarations in belated appeals and, therefore, the same interpretation would govern acceptance of declarations under the same Scheme in belated revision applications as well.

34. Even while holding in favour of the petitioner-assessee that the Designated Authority was required to accept the petitioner's declarations under the KVSS in the pending revision applications, even though belatedly filed, we find that since the assessee retained the amounts otherwise payable under the KVSS, the assessee must be held liable to pay interest on the amounts payable by the assessee under the KVSS. The rate of interest for this purpose would obviously be the rate of interest which the assessee would have been liable to pay under the provisions of the Income-tax/Wealth-tax Act, as the case may be, if the liability of the assessee to pay the amounts in question under the relevant Acts arose on 9th March 1999, that is, the 30th day after the passing of the order of the Designated Authority as contemplated by sub-section (2) of Section 90 of the Finance (No. 2) Act, 1998.

35. We accordingly hold that the petitioner is entitled to a writ of mandamus directing the respondent-Designated Authority to accept the petitioner's declarations under the Kar Vivad Samadhan Scheme (as contained in the Finance (No. 2) Act, 1998) which declarations were in respect of the "tax arrears" under the Income-tax Act and the Wealth-tax Act determined prior to 31.3.1998 and in respect of which the petitioner's revision applications were pending as on the date of the declarations made before 31.1.1999 which was the extended time limit for making declarations under Section 88 of the aforesaid Act.

36. We accordingly direct the respondent-Designated Authority to send, within sixty days from today, the orders under sub-section (1) of Section 90 of the Finance (No. 2) Act, 1998 to the petitioner determining the amounts of tax arrears (tax, penalty and/or interest) payable under the Kar Vivad Samadhan Scheme as contained in the Finance (No. 2) Act, 1998 alongwith interest payable by the petitioner on the amounts as ascertained under the KVSS at the rate/s applicable to the outstanding dues payable by the assessee under the provisions of the Income-tax Act, 1961 / Wealth-tax Act, 1957 as the case may be, for the period from 9.3.1999 to 9.9.2002, and also requiring the petitioner to pay interest at the same rate for the period from 10.9.2002

till the date of payment

37. Rule is made absolute to the aforesaid extent only with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-